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DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

20 December 1985

Mr. David Major
Director of Intelligence and
Counterintelligence Programs
National Security Council
Old Executive Office Building
Washington, D.C. 20506

Dear Mr. Major:

As you found at the Security Committee's seminar in November, an overwhelming majority of the SECOM members believe it would be inappropriate to decide in advance that employment of the polygraph [] can somehow exclude or reject information about unauthorized disclosures of classified information to anyone, including the news media. There is no doubt that the news media would criticize any program which might dry up some of their illicit sources. Nevertheless, even Daniel Schorr concedes the government's right to try to stop classified leaks by regulating its employees.

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You requested a statement of SECOM's views on this issue. Let's review the situation. The standard counterintelligence polygraph examination inevitably includes the question, "have you divulged classified information to an unauthorized person?" If the examinee gives a positive response, the examiner has no logical alternative to asking the identity of the illegal recipient of the classified information. Does the NSC Staff contemplate that if the subject identifies a member of the news media, the examiner must disregard the information?

The fact is that in agencies now using polygraph the question on unauthorized disclosures is asked and positive responses are pursued to a logical conclusion. To do otherwise would mean retreating from a logical procedure to one which is self-defeating.

This is not to say the government should publicize the new polygraph program as an anti-leak procedure. The position should be that government employees are expected to live up to their obligation to safeguard classified information from unauthorized disclosure. Those who violate this trust should be investigated to determine how, when and with whom they committed the violation. The fact is that disclosure to unauthorized persons is a federal crime. The occupation of the recipient of the information does not alter that fact. The fact is that the polygraph program does not touch the media in any

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way. It is confined to determining which government employees have willfully violated their secrecy agreements. The fact is that foreign spies read newspapers, and the publication of secrets includes revelation of those secrets for foreign governments.

If the media believe that a crime is not a crime when the beneficiary is a media representative, let them try to make the case. It sells the American people short to believe they would swallow such a proposition. Almost all the members of SECOM believe the President can win this one fairly easily. All he has to do is uphold the law. Divulging classified information to unauthorized persons is illegal. The President has taken a strong position that leaks to the media by government employees are wrong. He is ill served by a procedure that absolves leakers in advance of responding to the only security procedure that is likely to expose their illegal activities.

Nobody on the government payroll should be able to violate the law freely and with impunity. The "art form" of backgrounders, not-for-attribution statements, and anonymous government sources is not a creature of the media. It is a subterfuge created by persons on the government payroll who want to avoid the consequences of violating their responsibilities (and the law). The media would much prefer to identify their sources--it's bad journalism to omit such a basic fact as the source of a story. Naturally, given a choice between bad journalism and no story at all, the reporter will choose the former every time.

The simple cure is for the President to require that all government officials speak on the record. The question is, does any administration, Republican or Democrat, consider breaches of the law an appropriate price for being able to send up anonymous trial balloons?

This is an important issue. To sell out for political expediency fails to uphold the law and makes a mockery of the government's security program. The government must eventually decide whether it will meaningfully oppose unauthorized disclosures of classified information to the news media, or simply continue the hand-wringing, arm-waving and inaction which have become the standard response to leaks. There will never be a better time to act than now.

Sincerely,


Chairman

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JULY 1979

SALT I Leaks vs. SALT II Leaks

by W. Donald Stewart

LEAKS and techniques of leaks occurring during the development of the SALT I and SALT II agreements are similar in all respects. The Carter Administration and the Nixon Administration desired to have their respective SALT agreements ratified by the US Senate before the Presidential election. In an effort to expedite the finalization of their SALT agreements, each Administration has been inclined to make concessions to the Soviets. These concessions were often not believed to be in the best interest of our national security by certain members of the Senate Armed Services Committee; hence, each side aired its feelings by "leaking" highly classified data to the press to sway public opinion.

Now that we are in the fourth quarter, so to speak, of the Arms Race Superbowl, also more commonly known as the Strategic Arms Limitation Talks (SALT II) agreements, we can expect a rash of leaks until the final whistle blows. Rest assured that there will be one loser—the US public.

My knowledge of and interest in leaks stems from my experience in the Office of the Secretary of Defense as Chief of the Investigation Division, Directorate for Inspection Services. This office investigated major criminal and security matters for the Office of the Secretary of Defense, Office of the Joint Chiefs of Staff, and the Defense Intelligence Agency. From August 1965 until December 1972, while Chief Investigator, I handled 222 leak cases. Even after I left the Directorate for Inspection Services in December 1972 for the position of Inspector General of the newly formed Defense Investigative Service (until my retirement in June 1975), I was recalled to handle certain sensitive leak cases.

Why SALT Leaks

We have SALT leaks because we have two principal US groups involved with different objectives. We have the present Administration I shall call the "Vote Getters" and we have the Senate Armed Services Committee which has the responsibility to insure that any SALT treaty signed provides adequate national security. This group I shall call the "Protectors." There are two other minor groups who play a lesser role but cannot be ignored. They are the liberal Senators whom I shall call the "Detractors." They aren't exactly sure what they want, but to me it doesn't appear that the strongest form of national security is their quest, and finally we have the "Extortionists," a group of Senators who are more concerned with their personal interests than they are with our national security interests. Accordingly, the Vote Getters are sometimes pressured into buying their vote to insure ratification of the treaty. However, as far as SALT leaks are concerned, the Detractors and the Extortionists have shown little need to engage in leaks.

Top Secrets Become Weather Bulletins

Probably the first open sword rattling between the Vote Getters and the Protectors in the SALT II debate appeared in the press on November 30, 1978, when Senator Henry Jackson (D-WA), voiced his discontentment with the developing SALT II agreements. Things may have gone somewhat smoother except for the fact we lost a vital intelligence capability in Iran. As a result we no longer have the ability to closely monitor Soviet adherence to any SALT agreement.

Accordingly, the April 4, 1979 issue of the *New York Times* evidenced the first act of desperation on part of the Vote Getters. It came in the form of a leak of highly classified data to the effect that the US would be able to monitor Soviet adherence to SALT II agreements through the use of a modified version of the U-2 aircraft, the type Gary Powers flew over the USSR for CIA until he was shot down in 1954. Senator Jake Garn (R-UT) was incensed over this leak and charged in the letter-to-the-editor column of the *Washington Post* on April 11 that the leaked data was made available to the public to create a misimpression of our monitoring capability. (See May 1979 *AFJ*.) It was obvious that the Protectors were not responsible for the leak, because it served them no purpose. Moreover, that particular area was not the chief concern of the Detractors.

In the typical fourth quarter fashion of the Arms Race Superbowl, we could expect and did receive a counter-leak, obviously this time by one of the Protectors. The leak appeared in the *New York Times* issue of April 17, to which hip-shooting press secretary Jody Powell quickly and heatedly responded in so many words that Senator Garn was responsible. The Senator denied the accusation, and Jody Powell later backed off his charge.

Let's look at the new leak. It disclosed that CIA Director Stansfield Turner briefed a Senate committee on our Iran intelligence capability loss and stated it would be at least five years before we could attain a comparable capability to monitor Soviet adherence to the SALT II agreements. Secretary of Defense Harold Brown instantly countered in a Vote Getter rescue effort that we would be able to retain our former capability in a year.

The bottom line is that once again the public is the loser. Now the Soviets know how badly we've been hurt by our Iranian intelligence capability loss, and they also know of the U-2 as our second rate alternative. Top secret information was given out like a public weather bulletin.

SALT I leaks took a slightly different pattern than SALT II leaks. That is, there were continuous leaks from 1968-

1972, each time there was to be a SALT I discussion. At the expense of National Security, the Vote Getters made their Top secret point and the Protectors made their Top secret point. On one of the more explosive leaks in 1969, I had occasion to interview Paul Nitze, then our chief SALT I negotiator. His comment was, "I consider the disclosure to be a deliberate leak of information by well-informed sources who indulged in a very dangerous practice for the purpose of placing the Soviet missile warfare capability before the US public." He further advised that the figures disclosed in the news story were very accurate and highly classified.

Beecher's 22 Investigations

Probably the greatest SALT leak of all times appeared in a *New York Times* article by William Beecher on July 23, 1971; it was entitled "US Asks Soviets to Join in Missile Moratorium." The article appeared one day before a scheduled SALT I meeting on July 24 with the Soviets in Helsinki, Finland. President Nixon was absolutely livid, as the article exposed our fall-back position to the Soviets. Let me say bluntly that all hell broke loose. I was called at home on Saturday morning to begin an investigation. I had my first meeting with the newly appointed White House "plumber" chiefs, Egil Krogh and David Young. The FBI was also called; however, since I had developed the prime suspect, Dr. William VanCleave, Paul Nitze's top aide, I more or less carried the ball. President Nixon's blind anger toward VanCleave (whom we later proved innocent) was displayed on the now released White House tapes. But VanCleave enjoyed the same reckless public hip shooting from the Nixon Vote Getters that Senator Garn recently did from Jody Powell. VanCleave became a suspect because two days before the Beecher article appeared, Beecher visited VanCleave. Also, VanCleave, like so many top government aides, could not be bothered with security regulations such as "do not reproduce the original," a statement which appeared on a highly sensitive document in his possession and which he nevertheless chose to reproduce.

Although vindicated of the major crime, he was censured for security violations uncovered during the investigation. The investigation was probably one of the most intensive ever undertaken. Beecher's path, for instance, was retraced on a minute-to-minute basis. His past *modus operandi* was well known to us, and it was of help. His travels led him to Senator Henry "Scoop" Jackson's office. The Senator had been briefed earlier in the week by State Department aides. Naturally, the obvious

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next step was to interview Senator Jackson. This required White House approval, but it was never obtained.

The last and final SALT I leak that I investigated appeared in the *New York Times* on March 21, 1973—another article by William Beecher, this one entitled "US Says Soviets Improve ICBMs." Although the SALT I treaty had been signed, this leak was made to show the public we lagged the Soviets in arms and to develop support for the Nixon Vote Getters in their efforts for a larger supplemental appropriation. Actually, neither Defense Secretary Melvin Laird nor his successors knew the Vote Getters were handing out these leaks, because to give the leak more credibility the Vote Getters would raise a storm—and I'd be hurriedly called to investigate again. The most interesting thing about this last leak was that it suddenly occurred to me that on every major leak we had on SALT I, William Beecher was the reporter with all the hard facts. (Other prominent reporters had stories, but as I explained to one later, he and the others just had "crumbs." That reporter demanded to know how I could state that. I said, "Very simply, if you had the hard facts, we would have opened a case on your article." Only then did he realize that he had been part of the Nixon Vote Getters' smoke screen.)

In my final report, I showed how I arrived at the fact that the Nixon Vote Getters were responsible for several contrived leaks.

Being the "favorite son" reporter was not all bad for William Beecher: in April 1973, just one month after the above leak and six months after SALT I ratification, he was appointed Deputy Assistant Secretary of Defense for Public Affairs. Subsequently, he became the Acting Assistant Secretary of Defense for Public Affairs, complete with the car and chauffeur which then went with that position.

Now the Soviets know how badly we've been hurt by our Iranian intelligence capability loss, and they also know of the U-2 as our second rate alternative.

Beecher left the Pentagon in May of 1975 and on June 1st he joined the *Boston Globe*. On July 31, Beecher printed another big leak: "US Believes Israel Has More Than 10 Nuclear Weapons." Although I had already retired, I was called at home by a high Pentagon official and asked where I thought Beecher got his story. I laughed and recall saying, "Where else? You left the fox in the hen house."

The fact that my office had run 22 leak investigations of William Beecher's articles certainly had no bearing on his Pentagon appointment. Therefore, the question

naturally arises: after all the SALT II leaks are tabulated, which prominent news reporter will be as lucky as William Beecher?

Can Leak Cases Be Solved?

Contrary to popular misconception, leak cases can be solved. Unfortunately, as far as national security interests are concerned, the cure most often is worse than the illness. By that I mean: in an effort to put the guilty party in jail, we must declassify the classified data involved in order to go to trial. In doing so, foreign enemy intelligence becomes privy to our secrets—that we cannot afford as a rule, and thus must forego prosecution.

Prosecution is not the only form of punitive action. During my tenure, I've seen three flag officers punished—one was transferred, one was requested to retire, and one had his career advancement terminated. A civilian was reduced from GS-18 to GS-15, and others in the civilian ranks and military were administratively disciplined. The most effective tool for Schedule "C" appointees (political appointees) was to neutralize them—excluding them from receiving sensitive documents and from high level conferences. One former high level civilian employee serving as a consultant lost his security clearances. Our best security contributions frequently came from our investigative by-products—such as developing "holes" in our own security operations.

Prosecution Problems

Prosecution was not always thwarted by so-called "grey mail," documents in question which couldn't be declassified. Politics on part of President Nixon, Senate Armed Services Committee chairman Sen. John Stennis (D-MI), and Justice Department officials late in 1971 and early 1972 and later in 1974 obstructed the possible successful prosecution of Yeoman Charles E. Radford III, Rear Adm. Robert Welander and Admiral Thomas Moorer, then Chairman of the Joint Chiefs of Staff.

Radford admitted stealing highly classified documents from the briefcases of Dr. Henry Kissinger, then head of the National Security Council, and from General Alexander Haig, then a Presidential aide. Admirals Welander and Moorer admitted receiving those documents. But President Nixon couldn't stand the public embarrassment. Sen. Stennis dedicated himself to protecting the military establishment during his 1974 hearings on this matter—known as the Pentagon Spy Case. The Justice Department performed in its typically lethargic manner. No action was ever taken against anyone involved.

Earlier in 1970, the Justice Department failed to take action against an Air Force captain who distributed to the press a secret-sensitive memo on our ABM (Anti-Ballistic Missile) position, prepared by then Secretary of Defense Melvin Laird. The case was turned over to Justice, which accepted it but later allowed Secretary Laird to withdraw it. Laird informed Justice he had made a deal with Tom Wicker of the *New York Times* that if

Wicker returned his copy of the memo in question, no prosecutive action would be taken. Wicker returned the memo, and through it we trapped the suspected Air Force captain. Later, Wicker denied in a memo to Justice that he had ever made such a deal. I received the above data under the Freedom of Information Act. Personally, I believe Wicker. He couldn't have known that we could use the memo to trap the suspect. No action against the suspect was taken.

Another case from which Justice ran was when it was presented with evidence that Elliot Richardson, while Under Secretary of State, has caused top secret data to be leaked to Daniel Ellsberg of Pentagon Papers fame. That data subsequently turned up in a newspaper story in March of 1970.

The long and short of leak prosecutions is that you can only be prosecuted if you meet the two following criteria:

- (1) You cannot be an important person; and
- (2) You cannot know an important person.

Leah

AGENCIES RELUCTANT TO DECLASSIFY DATA

U.S. Security Leaks Going Unpunished

EDITOR'S NOTE: A Senate Intelligence subcommittee says it can find no way within the Constitution to punish federal employees who "leak" classified information or intelligence secrets. W. Donald Stewart, an FBI agent for 14 years, was espionage supervisor for nine years and later the Pentagon's chief investigator of leaks (such as the Pentagon papers). He believes the job can be done.

By W. DONALD STEWART

Written for United Press International

WASHINGTON — We caught red handed leakers and serious security risks but many were let off scot-free because of "Catch 9" in existing procedures.

Catch 9 is the ninth of 11 questions the Justice Department asks of agencies which have had security leaks before an FBI investigation leading toward prosecution can be started.

The question involves the ability of the agency to declassify material pertinent to the leak. If it is unable to declassify, Justice routinely refuses to investigate.

Actually, past practice shows that the whole process is rubber-stamped because the agency is usually reluctant to declassify the material in question, Justice is more than glad to get rid of it and the FBI is not begging for more work. So the culprits go unpunished — and often go on to promotions.

Leaks to the media and leaks by members of Congress have always frustrated prosecution because the Justice Department must show the data provided was transmitted "with the intent or with reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation."

Here is where the law might be changed: the person leaking the material must be aware that enemy agents will obtain such information from newspapers, magazines or television.

Many of the problems relative to press leaks could be solved by more expert and aggressive investigation of the leaker. Investigations should be followed through to the end and not killed in midstream or even before started. If an immediate prosecution can not be expected because of the nature of the material involved, often it is sufficient to identify the culprit responsible for the leak and remove that person from whatever he or she has access to. Punitive administrative action may pose problems, but most certainly some form of corrective action could be taken.

The subcommittee has failed to bite the bullet in recognizing that members of Congress and their staffs are quite often the source of the most disastrous leaks to the press. Sen. Garry Hart, D-Colo., quoted a 1971 CIA study which reflects that less than 5 percent of leaks have been attributed to members of Congress. I don't know how the CIA got that figure.

But even if members of Congress leaked only 1 percent, that 1 percent constituted the most devastating disclosures of the past decade. Other congressional leaks do more to weaken confidence in members of Congress than harm to our defenses — such as the leaks from the old House Intelligence Committee and the House Assassinations Committee.

Yet, who has ever asked the Justice Department to ask the FBI to investigate congressional leaks?

The Justice Department itself is prone to leaks. Has Justice ever asked the FBI to investigate in-house leaks? Never.

Catch 9 is not as formidable an obstacle as reported at the subcommittee hearings.

If a prosecution can't be pursued immediately because of the damage declassification would cause, the case can always be put on the back burner. Then perhaps a year or two later, when the concerned data can be safely declassified, Justice could pursue the case. This is never done now.

Present practice is to allow the agency to decide whether the data can be declassified. This could be better done by a body like the National Security Council which has a total overview of our intelligence posture.

It has also been suggested that classified material could be studied by a judge in private to decide whether prosecution could go forward without security damage.

We are inviting leaks because of lax screening of the people with access to secrets.

The press does not have access but reporters are often given off the record "backgrounders" based on classified information and sometimes are shown Top Secret material.

In 1969, a vice admiral compromised our 10-year lead over the Soviets in anti-submarine warfare techniques by giving a backgrounder without stipulating it was off the record. Fourteen newspapers ran the story.

All members of Congress are awarded Top Secret clearance automatically. Personal weaknesses and misconduct are overlooked which would cause a person in a government department to be cited as a possible security risk and barred from classified data.

National Agency Checks of enlisted military personnel as now conducted are practically worthless because they are based on the assumption that names, birthdates and other data as given are authentic. If nothing derogatory shows up in FBI or other files under those names, the person is cleared.

The required documentation can be fabricated: 500 Panamanians have illegally entered the Marine Corps, for example.

Then there was the case about two years ago of Thomas Ragner Faernstrom who was at first found to have re-enlisted fictitiously 10 times during a 13-month period between November 1973 and January 1975, collecting approximately \$30,000 in bonuses. Subsequent interviews with him revealed he had done this over a 10-year period and bilked the U.S. government out of \$600,000. A check of his fingerprints would have uncovered him at any stage.

But there's the flaw — fingerprints of enlistees are not checked with the central FBI files. The FBI checks fingerprints only under the name submitted. It does not have fresh prints to compare with others on file, so a fake name can short circuit the process.

Criteria differ for Top Secret clearance in the FBI, CIA, Defense Department, Civil Service and from agency to

agency.

The polygraph or lie detector, operated by qualified experts under strict controls to avoid invasion of privacy, could be well used in all screening processes.

What I would propose is simply taking in hand the personal security questionnaire, which all persons requiring a clearance must execute, and review one by one each question with the applicant. "Is your name John Jones? Were you born April 10, 1928 at New York? Have you ever been arrested?"

This is not an invasion of privacy since we are only repeating what the applicant has written and asking if it is true.

The security problem is not insoluble. Greater care can be exercised in the screening process.

And there are ways of punishing those leakers who cause real damage — or at least insure that they are isolated in the future from security matters.